

FINAL STATEMENT OF REASONS

Department of Conservation

SUBJECT MATTER OF PROPOSED REGULATION: SOLAR-USE EASEMENTS

Title 14, Chapter 6, Article 2, Sections Affected: 3100 through 3117

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The Department of Conservation (Department) began the rulemaking process on August 16, 2013 with a 45 day notice of proposed rulemaking. The public comment dated ended on September 30, 2013. Modifications to the proposed regulations were made in response to comments received. On October 23, 2013 the Department issued a 15-day Notice of Modified Text on. The notice was emailed the six parties that submitted comments in response to the initial Notice as well as one person who requested information on modifications to the initially proposed rule.

The "Notice of Public Availability of Modified Text" listed the Department's website from which interested parties could obtain the complete text of the regulations that would be affected by the modifications to the original proposal, with all of the modifications clearly indicated, These documents were also published on the Division of Land Resource Protection (Division) website for this rulemaking

<http://www.conservation.ca.gov/dlrp/lca/Pages/SolarUseEasements.aspx>.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and providing the rationale for the modifications made to the originally proposed regulatory text, including non-substantial modifications and clarifications made after the close of the 15-day comment period. This FSOR also contains a summary of the comments received by the Department and the Department's responses to those comments.

1. Section 3101: a definition of "solar-use easement amendment" has been added.
2. Section 3102: text has been added to clarify what documents constitute an application and where they must be submitted.
3. Section 3108: sub-division (a) amendments have been made to delete grading depth and soil removal from the criteria for soil management plans. Sub-division

(b) has been amended to clarify that the soil restoration component of the management plan is to provide provisions for monitoring the progress of restoration until restoration is complete and deleting the list of restoration strategies that had been in (b)(2). Sub-divisions (c) and (d) were amended to clarify that the solar-use easement land must be restored to the “same” condition that existed at the time that the easement was approved or accepted. This clarification resolves the inconsistency that had previously existed between Government Code sections 51191(c) and 51191.3(c) and previously proposed regulations 3108(c) and (d), and 3111(b) and (c).

4. Section 3110: this regulation was amended to delete reference to the Department and clarify that cities and counties have responsibility for policing solar-use easements.
5. Section 3111: sub-divisions (b) and (c) were amended to clarify that the solar-use easement land must be restored to the “same” condition that existed at the time that the easement was approved or accepted. This clarification resolves the inconsistency that had previously existed between Government Code sections 51191(c) and 51191.3(c) and previously proposed regulations 3108(c) and (d), and 3111(b) and (c). Sub-division (c)(1)(F) was amended to add disposal to the requirement for removal of buildings, structures and equipment necessary for site restoration. Sub-division (e) was amended to delete the Department’s consultation role in cities’ or counties’ review and approval of restoration securities.
6. Section 3112: sub-division (c) was revised to add provisions allowing the Department to review, comment, and make suggestions upon restoration securities.
7. Section 3113: the previously proposed section 3113 was deleted altogether. This deletion reflects the changes to the Department’s role in review of restoration securities approved by cities and counties as provided by the revised section 3112(c).
8. Sections 3114 through 3118: these regulations are re-numbered to reflect the deletion of previously proposed section 3113.
9. New Section 3113: the regulation was revised to change the Department’s responsibility regarding a city’s or county’s reduction or release of restoration security from approval of the reduction or release and allow the Department to

review, comment and make recommendations thereon. Sub-divisions (b) and (c) were revised accordingly.

10. New Section 3115: sub-division (d) was amended to delete reference to the Department from cities' and counties' responsibility over restoration securities.

11. New Section 3117: this regulation was revised. As revised, the regulation requires cities and counties to provide a landowner a public hearing prior to forfeiture of a restoration security. The revision also deletes all reference to the Department clarifying that the Department has no role in the forfeiture of restoration securities.

Local Mandate

This adoption of this rulemaking action does not impose a mandate on local agencies or school districts.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Summary and Response to Objection or Recommendations

The following comments, objections, and recommendations were made regarding the proposed action during a public comment period beginning August 16, 2013 and ending September 30, 2013.

The comments have been summarized and duplicate comments have been aggregated. At the beginning of each comment summary the people or organizations that made the comment are identified. At the end of each comment summary are one or more comment keys. The comment keys can be used to locate the original comments being summarized by referring to the marked-up copies of the written comment that are included in the rulemaking record.

The comment summaries and responses are organized by the section being discussed, with headings identifying the section as numbered in the originally proposed rulemaking.

Comments on Section 3100

1. *California Climate and Agriculture Network and Large-scale Solar Association*

Comment: The proposed regulation would require landowners seeking a solar-use easement to pay the Department of Conservation (DOC) a fee of \$7,100 to review their application.

Recommend lowering the fee or exploring the possibility of establishing a tiered fee based on the size and complexity of the proposed solar-easement (number of acres, parcels, etc.).

Response to 1: Rejected.

In researching the economic impact of these proposed regulations Department staff found that the amount of work that would go into reviewing an application and consulting with other agencies would be similar for a small or a large project. The \$7,100 fee has been split into an eligibility determination fee of \$4,900 and a management plan review fee of \$2,200, based on the estimated workload for these review phases. Only those projects that are determined to be eligible will be required to pay for the management plan review. Based on those findings the Department has chosen to go with the two-step flat fee rather than a graduated one. For more information on this topic see the Initial Statement of Reasons, ECONOMIC IMPACT ASSESSMENT/ANALYSIS: Discussion.

Comments on Section 3101

2. *Large-scale Solar Association*

Comment: The definition of "*solar-use easement*" under Government Code section 51190(c) could preclude continued or concurrent agricultural use on portions of an easement if such activity is not considered "incidental or subordinate" to the solar facility.

Recommend the Department clarify the definition of solar use easement in section 3101(a) of the Draft Regulations by specifying that incidental or subordinate agricultural activity includes but is not limited to continued agricultural use of the easement while a solar project is being developed and any concurrent agricultural use that the landowner or applicant deems compatible with a constructed or proposed solar facility.

Response to 2: Rejected.

Government Code section 51190(c) does not preclude continued or concurrent agricultural use on portions of an easement if such activity is not considered "incidental or subordinate" to the solar facility. Any use, including agricultural use of the land while the solar facility is under development and during the life of the easement are proper subjects for inclusion in the management plan and should

be addressed therein. It will be up to a city or county to determine if it will allow agricultural use on easement land while a solar project is being developed.

3. *Large-scale Solar Association*

Comment: Clarify that utility-owned substations built specifically to support a solar project fall under Govt. Code section 51238(a)(1,2) (electrical facilities are compatible uses within any agricultural preserve) and therefore do not need to be included as part of the definition of a solar use easement "*project*." If an applicant chooses to include them as part of the project, substations should be considered an "*accessory structure*" per the definition in 3101(a).

Response to 3: Rejected.

Substations that support the solar project, may be located on solar-use easement land pursuant to Government Code section 51190, and are a part of the solar-use easement project as defined by section 3101(a).

Comments on Section 3102

4. *County of Ventura*

Comment: The draft regulations are written in some respects to suggest direct submittal of documents and information from the landowner to the Department. The regulations should be reviewed and revised so that references are changed to be clear that information is submitted to the Department from the local agencies, who receive it directly from the landowner.

Response to 4: Accepted.

It is the intent of the Department that a landowner submits documents directly to the city or county. As such 3102 has been revised to add clarity to the section.

5. *Large-scale Solar Association*

Comment: Clarify section 3102(a)(1) regarding Project name or number, by specifying which name or number the Department is looking for. A project is likely to have multiple names and numbers associated with it including a local jurisdiction permit number and a CEQA State Clearinghouse number.

Response to 5: Rejected.

Applications will be submitted to the city or the county not the Department. Therefore the Department will leave it to the city or county to determine if further clarification is needed regarding the project name on an application. This regulation merely requires that if an identifying name or number is assigned by the city or county, that such name or number be included in the application.

6. *Adams Broadwell Joseph & Cardozo*

Comment: Section 3102 fails to require a recent soil test to establish pre-project soil conditions. Without this information, there will be no basis for measuring restoration of the lands.

Response to 6: Rejected.

Section 3103 requires a written narrative regarding eligibility. The required information should be sufficient to establish the existing conditions of the soil. In particular, sub-division (a) requires reference to soil survey information. All of this information can be utilized to measure restoration of the solar-use easements lands. The city or county can require additional soil information if the city or county considers it necessary

Comments on Section 3103

7. *Large-scale Solar Association*

Comment: Recommend that the written narrative requirement in section 3103 be amended to clarify the standard for continued agricultural production as ongoing economically viable agricultural production.

(e). a discussion of the best currently available agricultural management practices and an explanation as to whether one or a combination thereof would allow continued for ongoing economically viable agricultural production on the project site.

Response to 7: Rejected.

The recommended goes beyond the scope of statute which is focused on the viability of the land for agricultural use, not an unidentified or undefined measure of the “economic viability” of the land for agricultural use.

8. *California Climate and Agriculture Network*

Comment: Remove the requirements under Section 3103(d) as the request is vague and there is no reason to believe the applicant is particularly knowledgeable.

Response to 8: Rejected.

The information requested in Section 3103(d) is only vague in that it allows submission of information that can be obtained from multiple public or non-public sources including but not limited to county agricultural commissioner reports, commodity group reports, and assessments done in conjunction with the environmental review process (CEQA).

9. *California Climate and Agriculture Network*

Comment: Section 3103(e) Recommend clarifying what kind of information is desired: crops grown, cultivation and management practice(s) employed, etc..

Response to 9: Rejected.

This subsection is self-explanatory and no further clarification is needed.

Comments on Section 3104

10. *Large-scale Solar Association*

Comment: The interpretation of the requirement for a recent soil test report as “*no older than six months*” is unduly restrictive and fails to account for the necessary time to develop a project sufficiently to apply for a solar-use easement.

Govt. Code section 51191.8 requires only that the soil test must be “*recent*.” The Department has not provided any rationale as to why it is reasonable or necessary to interpret “*recent*” as six months. LSA recommends that the Department consider a reasonable time frame here – at a minimum two years. This change will help align the Draft Regulations with the real-time development process.

Response to 10: Accepted.

Soil chemistry can change with time, therefore it is important that if an eligibility application is based on soils limitations, that a soil sample must be a recent sample. In reviewing Section 3102 the Department has decided to extend the sample time from six months to no more than one year from the date the solar-use easement application is filed with the city or county.

Comments on Section 3105

11. *Large-scale Solar Association*

Comment: Information required in Section 3105 is not always available. For example, LSA members have found that farmers do not consistently track the groundwater fluctuations of their wells. It is also very difficult for farmers to determine exactly how much groundwater they applied specifically to a proposed easement site or if the water was extracted to support other acreage as well.

(a) the source or sources of surface water used for agricultural production on the solar-use easement land including the number of acre feet delivered and applied for each of the immediately preceding six (6) years or to the extent available if less than 6 years over the immediately preceding six (6) years or to the extent available if less than 6 years, ~~and saline water depths~~

(b.) a characterization of the groundwater available to the solar-use easement land including the well depth, ~~the amount of groundwater applied, the groundwater fluctuation~~

Response to 11: Rejected.

Government Code section 51191(b)(3) and Section 3105 require an analysis of water availability if eligibility for a solar-use easement is based upon insufficiency of water supplies. If the Department is to make a determination on the eligibility of a site on the basis of water availability or water quality, then an applicant must have data to support this claim. The six year time frame was chosen because it corresponds with crop and yield data required in Government Code section 51191(b)(5).

12. *Adams Broadwell Joseph & Cardozo*

Comment: Draft Section 3105 is not based on *soil* productivity or conditions, as required by subdivision (a)(l) of section 51191 of the Government Code. Instead, it allows any land, regardless of soil productivity or conditions, to be eligible for placement into a solar-use easement, as long as there is insufficient water availability. This expansion of the types of lands eligible for placement into a solar-use easement is directly inconsistent with and violates subdivision (a)(l) of section 51191 of the Government Code.

Response to 12: Rejected.

51191(a)(l)(A) States “The land consists predominately of soils with significantly reduced agricultural productivity for agricultural activities due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons.”

Section 3105 is consistent with the law. Water availability can be a physical limitation for agricultural productivity. Without water imports and the use of groundwater much of the farmland in California would be unproductive.

Comments on Section 3107

13. *California Climate and Agriculture Network*

Comment: Many producers in California lack adequate crop insurance. We recommend making the information requested in 3107(b) optional if it is not available for the crops grown.

Response to 13: No Action.

The commenter is referring to 3107(c), not (b). The initial proposed regulations as well as the ones released for a 15-day re-noticing state that “if applicable, supporting information in the form of crop insurance or disaster assistance approvals may be provided as evidence of crop and yield impacts.” Therefore the information requested in 3107(c) is optional and not a requirement.

14. *California Climate and Agriculture Network*

Comment: Recommend requiring the applicant to submit information on any contract they may have had with California Natural Resources Conservation Service (NRCS), within the past six years that includes the acres proposed for the solar easement. The information submitted should include an explanation as to why the conservation payments received from NRCS were not adequate to improve the land to maintain long-term agricultural production.

Response to 14: Rejected.

The statutes establish a framework for the type of information the Department can use to establish a project's land eligibility for a solar use easement. Section 3103 of the regulations requires a discussion of cultivation and management practices used at the site. Requiring an applicant to submit information on NRCS contracts would go beyond what the statute requires for eligibility.

15. *Large-scale Solar Association*

Comment: LSA recommends the Department consider similar changes to Section 3107 to those recommended for Section 3105, above, in order to reflect the real world availability of the requested information.

Specifically, LSA members have found that crop and yield information may not always be available on a parcel or field basis or for the full six years, as required in the Draft Regulations.

First paragraph: If the eligibility application is based upon an assertion that the soil is marginally productive or physically impaired in a manner that has impacted crop yield, the application shall include factual data specific to the site's crop and yield for the immediately preceding six (6) years or to the extent available if less than 6 years.

(a) annual cropping history and yields, preferably by parcel and individual field location, over the immediately preceding six (6) years or to the extent available if less than 6 years, as indicated on the map of the proposed solar-use easement area submitted pursuant to Section 3102(a)(4) of this article

(b) a comparison of crop yield information for the site against average crop yields for the same crop on a county basis as available. County level data may be acquired from the County Agricultural Commissioner's office

Response to 15: Rejected.

Statute Section 51191(b)(5) requires a landowner to provide crop and yield information for the past six years. This information may include grazing, dry farming or fallowing of the land, giving a clear picture of the uses. In addition, since the requirement is in statute the Department does not have the discretion to alter the requirement in regulations.

51191 (b) To assist in the determination described in this section, the city or county shall require the landowner to provide to the Department of Conservation the following information to the extent applicable:

(5) Crop and yield information for the past six years.

Comments on Section 3108

16. *California Climate and Agriculture Network*

Comment: The requirements under Section 3108(a), paragraphs 1 - 4 are duplicative of the information required in the application as described in Sections 3102 - 3107. We recommend a summary sheet with basic information.

Response to 16: Rejected.

While the information required in Sections 3102-3107 and 3108(a) is similar it is not duplicative.

The information required in Sections 3102-3107 is part of the application that a landowner will submit to a city or county. Information required in Section 3108(a), soil management and site restoration plan, is submitted after the Department has made a determination that a proposed site is eligible for a solar use easement.

The information requested in sections 3102 – 3107 are to explain the past and existing site conditions and practices, while the information requested in 3108 is regarding the proposed soil management practices while the land is being utilized as a solar facility. The information requested in these sections represents distinctly separate uses of the land, past, present, and future.

17. *California Climate and Agriculture Network*

Comment: To streamline the application process while still requiring adequate information to assess the project, we recommend combining the Soil Management and the Site Restoration plans as described in Sections 3108 and 3109.

Response to 17: Rejected.

The management plan is one document made up of two distinct sections, the soil management plan and the site restoration plan. The soil management plan will be used to guide soil conservation and monitoring strategies throughout the life of the project. The site restoration plan will primarily be used at the end of a project's life. Given that each of the two sections is used for a different purpose the Department will keep the requirements in Sections 3108 and 3109 as is.

18. *Large-scale Solar Association*

Comment: Fundamentally, this section fails to recognize that any soils that qualify for these easements already have poor quality and per Govt. Code 51191.3(c) need only to

be restored to the “*conditions that existed before the approval of the easement.*” Requiring more, including the removal and or storage of low-value soil for thirty-five years is wasteful, costly and unnecessary.

Response to 18: Accepted.

It was not the Department’s intent to imply that a landowner should store, for the life of the project, soil that had been removed during site preparation and other activities. Section 3108 has been revised to clarify the requirements of this section.

19. *Large-scale Solar Association*

Comment: Also troubling is the requirement for post-project monitoring as part of the site restoration. Nothing in the statute requires such monitoring, and once the site is restored at the expiration of the solar-use easement, that should represent the fulfillment for the developer’s responsibilities.

Response to 19: Rejected.

Monitoring is needed to verify that the land has been restored to the condition that existed at the time of approval or acceptance of the solar use easement. The condition can include the existence or re-growth of vegetation or other characteristics of the land. Monitoring is needed so a city or county has documentation upon which to make a determination to release the restoration security to the landowner.

20. *Large-scale Solar Association*

Comment: Providing for potentially endless changes to those requirements makes any project exceedingly difficult to manage and finance. Given this, LSA urges the Department to delete subsection (d) of 3018.

Response to 20: Rejected.

In an effort to prevent a city or county from arbitrarily asking a landowner to submit an amendment to the site restoration plan Section 3108 only allows a city or county to require an amendment to a plan when there is “new information that was not available when the permit was issued.”

Site conditions and soil management technologies may change over time. As such there needs to be a process for the plan and management techniques to adapt to given new conditions.

21. *Adams Broadwell Joseph & Cardozo*

Comment: Section 3108, the Department of Conservation, a city or a county cannot require a landowner to submit a proposed amendment to the site restoration component of the management plan unless there is “new information that was not available when the permit was issued.” This standard is insurmountably high.

Response to 21: Rejected.

The standard was set to prevent a city or county from arbitrarily asking a landowner to submit an amendment to the site restoration plan.

22. Large-scale Solar Association

Comment: LSA recommends that section 3108 of the Draft Regulations be amended to allow the mitigation requirement to be satisfied by the removal of the solar facility and its accessory structures, and requiring evidence that the soil has not degraded from the conditions existing at the time of the easement approval.

Response to 22: Rejected.

The city or county in which the project resides will be responsible for determining when a project site has been restored to the same general conditions that existed at the time of the project's approval. A city or county will set permit conditions and mitigation measures if needed; not the Department.

23. Large-scale Solar Association

Comment: Other recommended changes to section 3108 include:

(a)(2) soil management during the life of the easement, which may include, ~~including but not limited to:~~

~~A. soil removal, storage and protection~~

B. concurrent grazing activities

~~C. irrigation~~

D. maintenance activities

E. soil erosion protection

(c) If the landowner or project operator proposes to change or expand the project in such a way that an existing, approved management plan would no longer be adequate to ensure restoration of the solar-use easement land, the solar-use easement landowner shall submit, for approval by the city or county, a proposed amendment to the approved management plan. The amended plan shall be adequate to ensure the restoration of the solar-use easement land to the same general condition that existed immediately prior to the time of project approval, upon termination of the easement.

(b)2. Site Restoration Monitoring. Strike in entirety.

(d) Change in conditions/new information. Strike in entirety.

Response to 23: Partially Accepted and Rejected.

See Responses 18, 19, 20, and 22.

24. Adams Broadwell Joseph & Cardozo

Comment: Draft Section 3108 fails to require a description of activities to mitigate the project's impacts (or restore the soil) and a method for enforcing the mitigation measures.

Response to 24: Rejected.

See Response 22.

To ensure that a landowner meets the restoration requirement a landowner must post restoration security. If a city or county determines that a landowner failed to meet the restoration requirement the landowner may be required to forfeit that security so that the city or county can utilize the security for restoration.

25. *Adams Broadwell Joseph & Cardozo*

Comment: Section 3108 fails to establish or require a method for measuring whether restoration is successful. Without a definition or standard, restoration plans will be inconsistent, meaningless and unenforceable.

Response to 25: Rejected.

The city or county will have authority to determine whether restoration is successful. This authority and responsibility is made clear in section 3108 which requires the landowner to submit a soil management plan and site restoration plan that must be approved by the city or county. In addition, section 3110 provides for inspection of solar-use easements for by cities and counties and section 3111 requires cities and counties to determine the amount of the restoration security which must be in an amount that the city or county determines is necessary to ensure restoration of the solar-use easement site. Furthermore, sections 3112, 3113, 3114, 3115, 3116 and 3117 place authority and responsibility for administration of restoration security upon cities and counties. All of these regulations are consistent with the apparent overall statutory scheme to place solar-use easements under local purview as implemented by cities and counties. Therefore, the standards for determining the success of restoration are matters of local authority.

Comments on Section 3109

26. *Large-scale Solar Association*

Comment: LSA urges the Department to circumscribe this section by specifying only targeted types of requirements it could recommend and allowing for an iterative process between cities, counties and the landowner or operator prior to setting the appropriate requirements.

Response to 26: Rejected.

Statute Section 51191(c) requires that a management plan include any recommendations provided by the Department as part of any project approval. The statute does not allow for an alternative process.

27. *Large-scale Solar Association*

Comment: It is unclear how and whether the requirements in section 3109(b) of the Draft Regulations relate to environmental review and mitigation pursuant to CEQA for a project.

The most appropriate option is for this section to affirm any CEQA-required mitigation fulfills all mitigation requirements under the Draft Regulations. LSA strongly urges the Department to revise the regulations accordingly.

Response to 27: Rejected.

Section 3109(b) states that a county or city may require that a solar-use easement include additional restrictions, conditions, or covenants that the county or city determines are necessary or desirable to restrict the use of the land to photovoltaic solar facilities. The measures described in 3109(b) are not required.

The city or county in which the project resides will determine the appropriate level of environmental review under the California Environmental Quality Act and mitigation measures if any needed.

28. *Large-scale Solar Association*

Comment: Other recommended changes to section 3109 include: **(b)(3)**. if deemed necessary by the county or city to ensure that decommissioning requirements are met, provisions for financial assurances to fund restoration of the solar-use easement land to the same general conditions that existed before the approval or acceptance of the easement by the time the easement terminates.

Response to 28: Rejected.

The statute uses two different standards; (1) Section 51191(c) 'to its previous general condition, as it existed at the time of project approval'; and (2) Section 51191.3 (b)(3) "to the conditions that existed before the approval or acceptance of the easement." Given the two standards the Department has chosen more the descriptive standard and require solar-use easement land be restored to the conditions that existed before the approval or acceptance of the easement by the time the easement terminates.

29. *California Climate and Agriculture Network*

Comment: Regarding the requirements of the site restoration plan, as outlined in Section 3109(b), they do not appear to be well suited for restoring agricultural land (e.g. crop or grazing land). We recommend that DRLP instruct landowners to work with NRCS, their local Resource Conservation District or another technical service provider to develop a conservation plan for the restoration of the site that describes the agricultural crops and practices (e.g. soil and water management) that will be employed to return the land to crop or livestock production.

Response to 29: Rejected.

The commenter's recommendation is a good one; however, there is no statutory requirement for such a prescription. As adopted, landowners are free to seek technical assistance from NRCS or private sector consultants if such assistance will be necessary or helpful.

30. *California Farm Bureau Federation*

Comment: Section 3109. Additional requirements in subsection (b.)(3.) implies that financial assurances are at the discretion of the county, yet GC § 51191(c) requires mandatory financial assurances for term or self-renewing easements. The regs in Section 3111. Restoration Security Amount and Section 3112. Restoration Security Instruments clarify the issue but it might be helpful to add after “met” in 3109(b.)(3.), “for perpetual easements,”

Response to 30: Accepted.

Comments on Section 3110

31. *California Climate and Agriculture Network*

Comment: A reasonable range of fees for site inspections should be made available to landowners applying for the solar easement so that they can adequately estimate their costs for participation in the program.

Response to 31: Rejected.
Section 3110 has been revised, removing the Department from inspecting solar use easement sites. The Department does not have the authority to set fees for a city or county.

32. *Large-scale Solar Association*

Comment: This section is unnecessary. It is unclear who will be required to pay for these unnecessary site inspections and what benefit instituting this requirement will provide to existing city and county duties.

Response to 32: Rejected.
A solar use easement is a contract. It is important that a government entity entering into a contract has the right to access easement land when the entity believes that there has been a violation of any requirements of the solar-use easement statutes, regulations, the easement’s soil management and restoration plan, or local jurisdiction permit conditions.

Comments on Section 3111

33. *California Climate and Agriculture Network*

Comment: Annual reviews by the city or county of the restoration security requirements of the easement contract seem excessive. We recommend three to five year reviews.

Response to 33: No Action Required

Neither the statutes nor the proposed regulations require an annual review of a restoration security. Section 3111(g) states “The amount and validity of the restoration security shall be reviewed by the landowner or operator no less often than once every five years...”

34. Large-scale Solar Association

Comment: Section 3111 imposes far more stringent requirements by requiring the security to cover the costs of re-vegetation, monitoring, fencing and liability insurance. The restoration security amounts should reflect the only the statutory requirement, rather than imposing additional and onerous requirements for security. As such, and these elements should be removed from the Draft Regulations.

Response to 34: Rejected.

The statutory and proposed regulatory requirement is that solar use easement land be restored to the same conditions that existed at the time of approval or acceptance of the easement. To that end, Section 3111(c) uses the words “to the extent applicable” for a variety of activities may be used to implement a management plan. The activities listed are not required; they are a list of possibilities.

35. Large-scale Solar Association

Comment: LSA supports previous parties concerns regarding the frequency of reevaluation of the security requirements. This section should be stricken.

Response to 35: Rejected.

See Response 33.

36. Large-scale Solar Association

Comment: Recommended changes to section 3111:

(c)1. the cost of the physical activities and materials necessary to implement the approved management plan, which may includeing:

- A. re-grading
- ~~B. re-vegetation; including monitoring~~
- C. labor and supervision
- D. equipment
- E. mobilization and transportation
- F. removal of buildings, structures, and equipment
- G. soil tests
- ~~H. fencing~~
- ~~I. liability insurance;~~
- ~~J. any other necessary restoration procedures~~
- (g.) **strike in entirety**

Response to 36: Rejected.
See Response 34.

37. County of Ventura

Comment: Section 3111 (c)(1)(F) should be revised to include "Removal and disposal of buildings, structures and equipment." Disposal of such materials in a landfill or at an appropriate recycling facility can be costly and should specifically be included in the lists of restoration activities.

Response to 37: Accepted.

Comments on Section 3112

38. Large-scale Solar Association

Comment: LSA recommends that these sections be modified to clarify that either the landowner or operator can provide the restoration security.

3112(a) If a city or county requires restoration security pursuant to Government Code section 51191.1(b)(3) and section 3111(b) of this article, the city or county shall determine what type, and the amount, of financial assurances or financial instruments the landowner or operator shall provide to ensure that restoration of the easement land is performed in accordance with the approved soil management plan and Government Code section 51191(c).

Response to 38: Rejected.
Government Code section 51191(c) requires a landowner to post a performance bond or other securities to fund the restoration. The statute is clear that a landowner is to post a bond or other security. The Department does not have the discursion to allow for an alternative possibility that an operator could post a bond or security.

Comments on Section 3113

39. Large-scale Solar Association

Comment: LSA recommends that these sections be modified to clarify that either the landowner or operator can provide the restoration security.

3113. For term easements and self-renewing easements, the city or county shall submit a copy of the proposed Restoration Security and the calculation of the Restoration Security amount submitted by the landowner or Operator, to the Department for review

Response to 39: Rejected.

Section 3113 has been removed from the revised regulations. Additionally see Response 38.

Comments on Section 3114

40. *Large-scale Solar Association*

Comment: In this section, the Draft Regulations propose to allow the Department to review and comment on a proposed reduction or release of restoration security. This is unreasonable and overreaching. Subsections (c) of section 3114 of the Draft Regulations should be stricken.

Response to 40: Rejected.

Section 3113 has been removed from the revised regulations with a portion of the section moved to Section 3112. The proposed regulation that was numbered Section 3114 is now Section 3113 and has been revised to clarify that the Department's role is limited to reviewing, commenting and making recommendations on the reduction or release of a restoration security.

Comments on Section 3118

41. *Large-scale Solar Association*

Comment: Section 3118 should be amended to clarify that only the city or county that receives the security is responsible for conducting a public hearing on the forfeiture of restoration security.

Response to 41: Accepted.

Previously proposed Section 3118 is re-numbered to Section 3117 in the final regulations. This section has been revised to clarify that if under Section 3115 a city or county determines that a restoration security shall be forfeited, the landowner shall be provided a public hearing prior to the forfeiture.

42. *Large-scale Solar Association*

Comment: LSA also recommends that an additional subsection (c) be added to section 3118 to ensure the landowner or operator has appropriate recourse in the case of a forfeiture hearing at follows:

(c.) Landowner or Operator shall have 180 days to demonstrate financial capability to perform restoration or appeal the decision to the city or county governing body.

Response to 42: Rejected.

Previously proposed Section 3118 has been renumbered as Section 3117 in the final regulations. The revised section has been revised to clarify that if under Section 3115 a city or county determines that a restoration security shall be forfeited, the landowner shall be provided a public hearing prior to the forfeiture. The Department has no authority to establish procedures for a city or county in conducting a forfeiture hearing.

43. County of Ventura

Comment: Section 3118 refers to the possibility that there could be either a "local agency hearing" or a "Department hearing". Given that the decision-making authority rests with the local agencies, why would there be a Department hearing? Given the construct of the draft regulations, such a hearing would only be appropriate if the Department were given authority to hear an appeal of a local agency decision. Was that the intent? If it was, it should be clearly stated as such. Otherwise, the reference to a Department hearing should be stricken.

Response to 43: Accepted.
See Responses 41 and 42.

Comments in General

44. Adams Broadwell Joseph & Cardozo

Comment: Despite the clear standard for restoration of agricultural lands placed in, or removed from, solar-use easements, the draft regulations provide no clear guidance on what information is required to meet that standard, no mitigation to ensure the standard is met, no standard for measuring whether restoration has occurred and no realistic mechanism for enforcement to ensure that management plans return agricultural lands to pre-project conditions. As a result, the draft regulations effectively relax the standard for restoration in violation of section 51191 of the Government Code.

Response to 44: Rejected.
The statutory and proposed regulatory requirement is that solar use easement land be restored to the same conditions that existed at the time of approval or acceptance of the easement. A city or county will use the approved soil management and restoration plans as well as terms and conditions in the easement as the standard to determine if restoration requirements have been met. To ensure that a landowner meets the restoration requirement they must post a restoration security. If a city or county determines that a landowner has failed to meet the restoration requirement the landowner may be required to forfeit that security so it can be used for restoration.

Comments on Local Fees

45. County of Ventura and County of San Diego

Comment: The regulations should clarify that local governments will recover costs from solar-use easement applicants when they initiate the local discretionary review process.

Response to 45: Rejected.
Whether a city or county imposes fees to recover their costs to administer solar-use easements is purely a function of the cities' and counties' authority. The Department has no inherent authority, nor does SB 618 provide the Department

with authority to mandate whether or how much cities and counties impose fees with regard to solar-use easements.

Comments on Local Government Engagement

46. *County of San Diego*

Comment: The regulations are silent regarding the local agencies' role in exercising their land use authority over a proposal to convert a Williamson Act Contract to a solar-use easement and ultimately construct a solar project.

Response to 46: Rejected.

Applications for solar-use easements will first be submitted to the city or county for review. Although Section 3102 requires the city or county to determine whether they will consider approval of a solar-use easement application prior to submitting the application to the Department, the local government may exert its land use authority prior to or concurrent with submitting the application materials to the Department. Nothing in the proposed regulations suggests that a city or county must approve or accept a solar-use easement if the Department determines the land eligible or the management plan adequate. Therefore, this rulemaking does not interfere with local authority. From the Notice of Proposed Rulemaking "This rulemaking action clarifies, interprets, implements, and makes specific the procedural and substantive requirements that a landowner, applicant, or project proponent must satisfy in order to place land under a solar-use easement."

47. *County of San Diego*

Comment: The regulations should include a requirement that applicants for a solar-use easement submit a letter from the local jurisdiction describing the permitting requirements applicable to a proposed solar use.

Response to 47: Rejected.

A letter of this type will not aid the Department in making a determination of eligibility for a solar use easement.

48. *County of San Diego*

Comment: The regulations need to include provisions describing what would happen if the DOC approves a solar-use easement, but the applicant is not able to obtain the required discretionary approvals from the local jurisdiction for the solar project.

Response to 48: Rejected.

The Department makes a determination on whether an area of land is eligible for a solar use easement. The Department does not approve a solar-use easement, a city or a county takes that action.

49. *County of San Diego*

Comment: The regulations also need to address what would happen to the solar-use easement and whether there is a process to revert it back to a Williamson Act Contract.

Response to 49: Rejected.

At the end of a term or self renewing easement a landowner can exercise his or her discretion to apply for, or not to apply for, a Land Conservation (Williamson) Act Contract. Whether a city or county includes such a provision within their solar-use easement, is within their discretion and the solar-use easement statutes and these proposed regulations do not affect the city's or county's authority.

50. County of San Diego

Comment: The regulations should specify that the DOC's acceptance of land as eligible for a solar-use easement is only one step in the permitting of a solar project and does not guarantee a solar project would be approved by the local agency in accordance with its local regulations.

Response to 50: Rejected.

The Department will leave it to a city or county to advise a landowner in the process of applying for and receiving a solar use easement.

Comments on NOPA Cost Impacts on a Representative Private Person or Business

51. County of San Diego

Comment: The ultimate cost to an applicant will be much greater than the stated \$10,000 when considering the cost of local jurisdiction permit processing and environmental review.

Response to 51: Rejected.

One of the purposes of a Notice of Proposed Rulemaking is to identify the costs of a proposed rulemaking to those that will be regulated by the rulemaking. This rulemaking does not cover the local permitting process, as such these costs were not included the Notice.

Summary and Response to Objection or Recommendations

The following comment was made regarding the proposed action during a public comment period beginning October 23, 2013 and ending November 7, 2013.

The comment has been summarized. The organization that made the comment is identified. At the end of the comment summary is the Department's response.

Comments

1. *Large-scale Solar Association*

Comment: The Revised Regulations have been changed to require restoration of the site to the “same general condition that existed at the time of approval” of the easement. Not only is this an impractical requirement as there climatic and other changes that may well occur over the life of the easement that are outside of the control of a developer, but it is contrary to SB 618, which indicates that the land should be restored to the “previous general condition, as it existed at the time of project approval.” While later sections of SB 618 use the language “to the conditions that existed before the approval,” it does not require restoration to the “same condition.” This latest amendment contributes to the overall unworkable approach to the implementation of SB 618.

Response to 1: Rejected.

The statute uses two different standards; (1) Section 51191(c) requires that the land shall be restored ‘to its previous general condition, as it existed at the time of project approval’; and (2) Section 51191.3 (b)(3) requires that the land shall be restored “to the conditions that existed before the approval or acceptance of the easement.” Given the two standards the Department has chosen more the restrictive standard and require solar-use easement land be restored to the conditions that existed before the approval or acceptance of the easement by the time the easement terminates.